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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/597,910

08/11/2006

James Heselden

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MORRIS MANNING MARTIN LLP  
3343 PEACHTREE ROAD, NE  
1600 ATLANTA FINANCIAL CENTER  
ATLANTA, GA 30326

EXAMINER

KRECK, JOHN J

ART UNIT

PAPER NUMBER

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/597,910	<b>Applicant(s)</b> HESELDEN, JAMES	
	<b>Examiner</b> John Kreck	<b>Art Unit</b> 3672	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,8,9,15-24 and 29-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,8,9,15,16,18-24 and 29-38 is/are rejected.
- 7) ☒ Claim(s) 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the secondary cage structure in the form of a multi-compartmental gabion spaced from the end or side wall (claim 1) must be shown or the feature(s) canceled from the claim(s). The first and second fill against the spaced multi-compartmental gabion (claim 8) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2 , 8, 18- 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 requires that the façade (i.e. the gabion mentioned in claim 1) comprises a material which permits viewing of the surface effect material (i.e. which is between the façade and the cage). One of ordinary skill in the art would understand a gabion to be a cage or basket filled with rock.

Claim 8 requires first and second fill “against the façade” or “against the side or end wall on which the insert is provided”. It is not clear where this fill is located. Is this fill the same as the material which provides the facade gabion (i.e. is this the material inside the gabion called for in claim 1)?

Claims 18-23 are not clear regarding the scope of the claims: these claims apparently recite details of the base structure, but it is not clear that they positively require the base structure as part of the claimed invention. It is noted that claim 30 (which depends from claim 9 like claims 18-23 do) EXPLICITLY recites the combination. It is therefore

understood that claims 18-23 DO NOT claim the combination, but recite details of the base structure as functional limitations of the cover panel.

Claim 24 is unclear regarding the material: does this claim require that the apparatus includes the material (combination of base structure, material and façade), or that the apparatus is spaced sufficiently to accommodate the material (combination of base structure and façade), or that the apparatus is capable of being spaced to such an extent (façade only)? It is not clear whether applicant intends the multicompartmetnal cage to be spaced sufficiently to accommodate boulders in between. It is noted that claim 30 (which depends from claim 9 like claim 24 does) EXPLICITLY recites the combination. It is therefore understood that claim 24 does not claim a combination.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 9, 15, 16, 18, 19, 20, 21, 22, 23, 24, 29, 30, 31, 32, 33, 34, 35, and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Heselden (U.S. Patent number 5,472,297).

Heselden describes an apparatus FOR creating an outer surface effect; the apparatus comprising means defining a cover panel; the means comprising a multicompartmental cage (e.g. the two leftmost cages in figure 16).

With regards to claims 30,31, 32, 33, 34, 35, and 38: Heselden describes the combination of the support panel ( e.g. the third cage from the left in figure 16) and an apparatus according to claim 9 (e.g. the two leftmost cages).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ragazzo (U.S. Patent number 5,636,938) in view of Heselden (U.S. Patent number 5,472,297).

a. Ragazzo describes the multicompartmental cage structure (see figure 1, the cage structure is found on the right, at or near 2 and 14) provided with a façade or insert (e.g. the gabion on the left side, at or near 9 and 10) spaced (see near 3) to an extent sufficient to accommodate a surface effect material (the space is deemed sufficient to accommodate at least a material such as silk cloth) between the side wall and the façade; and the façade comprising a secondary cage structure in the form of a multicompartmental gabion.

b. Ragazzo describes the structure entirely as claimed, but lacks the various pivotally connections of claim 1.

- c. Heselden describes a similar cage structure with various pivotal connections.
  - d. It is clear that the prior art teaches each of the claim elements; that the claim elements would perform the same function in combination; and that one of ordinary skill in the art would understand that the results of such combination would be predictable; and therefore claim 1 is unpatentable.
6. Claim 17 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments concerning the new matter rejections are persuasive.

Applicant's arguments filed 12/10/07—concerning the Heselden rejection of claim 9-- have been fully considered but they are not persuasive. It is noted that applicant argues the limitations from claim 1 for claim 9.

Applicant's arguments with respect to the 102 rejections over Ragazzo have been considered but are moot in view of the new ground(s) of rejection.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kreck whose telephone number is 571-272-7042. The examiner can normally be reached on Mon-Fri 6am-3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bagnell can be reached on 571-272-6999. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John Kreck/  
Primary Examiner, Art Unit 3672

7 May 2008